

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

SENTENCING HEARING
DECEMBER 17, 2021
BEFORE THE HONORABLE PHILIP P. SIMON
UNITED STATES DISTRICT COURT

APPEARANCES:

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1 PROBATION:

Abby Wichlinski
and Troy Sabourin, USPO

2 ALSO PRESENT:

Defendant, Lorenzo Johnson

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25 computer-aided transcription.

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1 (The following proceedings were held in open court,
2 commencing at 10:26 a.m., reported as follows:)

3 (Call to order of court.)

4 THE COURT: You can be seated.

5 We're on the record this morning in *United States vs.*
6 *Lorenzo Johnson*. Mr. Johnson is here today with his lawyer,
7 Mr. Tavitas. We have Ms. Kelley and Mr. Palomo here for the
8 Government.

9 The Defendant was found guilty a number of months ago--
10 let me get the exact date --on August 16th of this year by a
11 jury on five counts of the seven-count Indictment. In
12 particular, he was found guilty of Counts One, Two, and Three
13 and Counts Six and Seven. Of course, the other counts were
14 related to another defendant.

15 So he was adjudged guilty on his plea, and we ordered the
16 preparation of a Presentence Report, which I got on 11/30 of
17 '21, from Ms. Wichlinski. I have studied the Report and the
18 Addendum. I also received a Sentencing Memorandum from the
19 Government and some other filings that we will talk about here
20 in a minute, as well as a Motion for Preliminary Order of
21 Forfeiture.

22 So that's all of the material that I have reviewed in
23 advance of the hearing today to get prepared.

24 Mr. Tavitas, does that sound like what I have before me
25 for purposes of sentencing?

1 **MR. TAVITAS:** Yes, Your Honor.

2 **THE COURT:** All right. Who can I talk to here today?

3 **MR. PALOMO:** Me, Your Honor.

4 **THE COURT:** All right. Mr. Palomo, does that sound
5 like the universe of material I have before me for my
6 consideration?

7 **MR. PALOMO:** Yes, Your Honor.

8 **THE COURT:** All right. So, Mr. Tavitas, can I assume
9 that you've had a chance to sit down with Mr. Johnson and
10 thoroughly review the contents of the Presentence Report
11 sometime before the hearing today?

12 **MR. TAVITAS:** We have, Your Honor. Probably -- I
13 know in the last couple weeks, I've seen Lorenzo, like, two or
14 three times, not only going over the presentence, but obviously
15 another matter that the Government had given to my attention as
16 well as for the forfeiture as well, Your Honor.

17 **THE COURT:** Okay. Is that all true, Mr. Johnson; did
18 you have a chance to talk to your lawyer about the contents of
19 the Presentence Report as well as those other issues?

20 **THE DEFENDANT:** Yes, sir.

21 **THE COURT:** All right. And, Mr. Palomo, I assume
22 you've had a chance to thoroughly review the Presentence
23 Report; is that right?

24 **MR. PALOMO:** Correct, Your Honor.

25 **THE COURT:** Okay. Now, according to the Addendum in

1 the Presentence Report, there are some factual issues that need
2 to be resolved. Does the Addendum accurately identify what is
3 in dispute between the parties?

4 Mr. Tavitas?

5 **MR. TAVITAS:** It does, Your Honor.

6 **THE COURT:** Mr. Palomo?

7 **MR. PALOMO:** Correct, Your Honor.

8 **THE COURT:** Would you agree that everything else in
9 the Presentence Report that's not identified in the Addendum as
10 being in dispute, is everything else materially accurate?

11 **MR. PALOMO:** Yes, Your Honor.

12 **MR. TAVITAS:** It is, Your Honor.

13 **THE COURT:** Okay. So before we dive into the
14 Addendum and resolve those objections, let me just first ask:
15 Am I going to hear any victim allocution here today; any of the
16 witnesses want to be heard?

17 **MR. PALOMO:** No, Your Honor. We did submit to the
18 Court a victim impact statement, though.

19 **THE COURT:** Yeah. Do you have a copy of it?

20 **MR. PALOMO:** Yes, Your Honor.

21 **THE COURT:** Would you mind providing me a copy of it.
22 I'm very sorry. I had not had a chance to read that, and I
23 want to read it right now. I know it was given to me just as I
24 walked in, and then I forgot to read it on my way out here
25 because it was just filed last night, and I've been at a

1 doctor's appointment this morning.

2 (Document tendered to the Court.)

3 Thank you. So just give me one minute to read this.

4 Can you tell me who the author of this is, Mr. Palomo.

5 Because it's redacted.

6 **MR. PALOMO:** Pardon me, Your Honor?

7 **THE COURT:** Can you tell me the author of this.

8 **MR. PALOMO:** This would be the guardian for Jane Doe,
9 who is the victim of Count Two, I believe.

10 **THE COURT:** Which of the three women is it associated
11 with?

12 **MR. PALOMO:** This would be the victim for the Jasmine
13 Stanley count, Your Honor.

14 **THE COURT:** Got it. Okay.

15 (Brief pause.)

16 Okay. Thank you.

17 Before we get into the objections, there was a Preliminary
18 Order of Forfeiture, and I think I neglected to ask at trial
19 whether or not there was going to be any objection if the
20 Defendant was found guilty. Ordinarily, my practice is to ask
21 the Defendant and his lawyer whether there's going to be a
22 dispute about the forfeiture; and, of course, he has a right to
23 a jury trial on the forfeiture, and I ordinarily ask the
24 Defendant whether they are going to demand their right to the
25 jury trial on the forfeiture in the event of a conviction. I

1 believe I neglected to do that here in this case for reasons I
2 don't recall. Probably because I just forgot about it. But in
3 all events, there is an effort here by the Government to
4 forfeit what amounts to a bunch of, I think, cellphones and
5 maybe other computer equipment. Is that right, Ms. Kelley?

6 **MS. KELLEY:** As well as a firearm and ammunition,
7 Your Honor.

8 **THE COURT:** That's right. So are you going to have
9 any objection to the forfeiture of those items, Mr. Tavitas?

10 **MR. TAVITAS:** No, Your Honor. It is my recollection
11 that, prior to -- while the jury was deliberating, that the
12 forfeiture question did come up. And so then I went and spoke
13 with Mr. Johnson in that -- in the event that there was a
14 conviction, would we waive forfeiture. And we indicated to the
15 Court that we would. In addition, the motion for forfeiture
16 that was recently filed, I did review it with Mr. Johnson, and
17 we have no issue with that, Your Honor.

18 **THE COURT:** All right. Is that all true,
19 Mr. Johnson?

20 **THE DEFENDANT:** Yes, sir.

21 **THE COURT:** Okay. So I will order the forfeiture as
22 part of my sentencing order here when we get to that.

23 And, Ms. Kelley, can you give me a copy of that
24 forfeiture --

25 **MS. KELLEY:** Yes, Your Honor.

1 **THE COURT:** I know you provided it, but for reasons
2 with this COVID, and I have law clerks working at home, and
3 that's not anybody's fault but it --

4 **MS. KELLEY:** It probably was --

5 (Document tendered to the Court.)

6 **THE COURT:** No, that's fine. I just want to be able
7 to get exactly what the language is. This was sent to me, but
8 I failed to print it out. So it's nobody's fault but my own,
9 but I want to have the exact item of property so I can read it
10 into the record.

11 Okay. Again, before we get to the objections, I wanted to
12 cover one other area.

13 On December the 3rd, the Government filed, frankly, an odd
14 motion. It was seeking a protective order for something before
15 actually producing it to the Defense and providing it -- Well,
16 they provided it to the Court, but it was an ex parte request
17 for a protective order. I wasn't comfortable with that kind of
18 procedure, so I simply ordered the production of the underlying
19 material that's laid out in Document No. 111, but also
20 immediately ordered its protection by virtue of a protective
21 order. And I've been told that the Government has complied
22 with that request and the material was, in fact, disclosed to
23 Mr. Tavitas; again, the material contained in Document No. 111.

24 Is that true, Mr. Tavitas?

25 **MR. TAVITAS:** It is true, Your Honor. On

1 December 6th, I received a letter from the Government
2 regarding the specific -- the *Giglio* as far as -- in the
3 protective order. And this particular document, I was able to
4 show it to Mr. Johnson. We were actually at the Hammond Jail.
5 There's a glass partition, but I was able to show him. It's a
6 two-page document, and I was able to show him both pages, and
7 we were able to review it together.

8 **THE COURT:** And just without getting into the details
9 of it because it's under seal, in a summary way, it deals with
10 potential *Giglio* material as it relates to two of the agents in
11 that case; is that right, Ms. Kelley, just for the record?

12 **MS. KELLEY:** Yes.

13 **THE COURT:** And, Mr. Tavitas, did you have a chance
14 to fully discuss this with your client and what, if anything,
15 you're going to do with it?

16 **MR. TAVITAS:** I have, Your Honor. Not only after
17 getting this produced. I have -- I did have a discussion with
18 Mr. Johnson. Also had a discussion with Mr. Johnson earlier
19 today, as well. Based on this material, this disclosure,
20 Mr. Johnson wanted me to orally request a motion for a new
21 trial.

22 He believes that his trial -- he was prejudiced by not
23 having this information given to us prior to trial and that he
24 believes that the jury should have been aware of the contents
25 that's in the protective order. And for that reason,

1 Your Honor, we would orally move for a motion for a new trial
2 in this matter.

3 **THE COURT:** This is different from what I was
4 expecting, frankly. I mean, if you want to file a motion for a
5 new trial, file a motion for a new trial and support it with
6 how you would have used it, how it would have been germane to
7 something, you know, would it have been admissible, what's the
8 law governing, et cetera. Instead, you're simply making an
9 oral motion that's not, sort of, necessarily well-supported.

10 I have no idea how this could have been used in a trial.
11 I haven't gone back -- Because there hasn't been a motion until
12 ten seconds ago, I haven't gone back and read the testimony of
13 Agent Robertson or Agent Oakes to see how this information
14 could have somehow been germane to impeaching them; did they
15 say something during their testimony that would have reasonably
16 raised this issue and allowed you to cross-examine on it, you
17 know. Do you have anything more specific to say about it?

18 **MR. TAVITAS:** I do not, Your Honor.

19 **THE COURT:** Let me ask you, Ms. Kelley. In
20 paragraph 2 of your motion, you say that the agents did not
21 disclose this information and what I -- There was some
22 ambiguity to that to me. Was that saying they didn't disclose
23 the information, the subject information, during your interview
24 with them or during trial, while they testified?

25 **MS. KELLEY:** In our motion we were referring to the

1 pretrial discussions with the agents.

2 **THE COURT:** I see. And so you had asked them during
3 your pretrial interview whether there was anything that would
4 undermine their objectivity in the case, essentially?

5 **MS. KELLEY:** Yes, Your Honor.

6 **THE COURT:** And they both said no?

7 **MS. KELLEY:** That's correct, Your Honor.

8 **THE COURT:** And possibly this information that they
9 didn't disclose could bear on that; that's the reason you've
10 disclosed this?

11 **MS. KELLEY:** Yes. Essentially. Yes, Your Honor.

12 **THE COURT:** I guess, Mr. Tavitas, how would you have
13 used this at trial? I want to make a record here. If we're
14 going to do this, we're going to do it. Otherwise, I'm going
15 to suspend the hearing and force you to file a motion instead
16 of just dumping this in my lap and expecting me to make some
17 ruling by the seat of my pants.

18 **MR. TAVITAS:** I understand, Your Honor.

19 **THE COURT:** That's not how it works, and it's a
20 little unfair to the Court.

21 **MR. TAVITAS:** I understand that, Your Honor, and I do
22 apologize. I did go over, when I did get this letter, and I
23 showed it to Mr. Johnson, and I indicated that I had gone over
24 with the transcripts, and I gave my opinion to Mr. Johnson as
25 if -- if this information had been disclosed and if it would

1 have been potentially allowed at trial. I gave Mr. Johnson
2 that particular opinion. But even after giving that opinion,
3 again, Mr. Johnson this morning asked -- was asking me to
4 orally make that request that I made. So, again, I do
5 apologize to the Court.

6 **THE COURT:** All right. I don't know what else to say
7 other than to say I deny the motion for a new trial based upon
8 its barebones nature. It's not well-conceived. It hasn't been
9 explained to me. I haven't been shown how this information
10 would have been used. The information seems entirely
11 irrelevant to anything that took place during this trial as far
12 as I can tell, and I can conceive of no way it would have been
13 used by the Defense during the course of the trial, whether
14 that be in general or, in particular, cross-examination of
15 either of these witnesses; and in the absence of a more
16 particular motion telling me why what I just said is incorrect,
17 the motion is denied.

18 Is there anything else to say about that?

19 **MR. PALOMO:** Not about that, Your Honor. I did
20 neglect earlier to discuss restitution.

21 We have received restitution requests from the victims,
22 but we have not yet received materials supporting those
23 requests.

24 **THE COURT:** Okay.

25 **MR. PALOMO:** And we would ask the Court to delay a

1 restitution order for a period of up to 90 days.

2 **THE COURT:** You have 90 days; right?

3 **MR. PALOMO:** Yes, Your Honor.

4 **THE COURT:** Fair enough. I won't speak to
5 restitution today because nothing has really been presented to
6 me; but, of course, the statute allows that process to be
7 delayed for 90 days, and I'll await hearing from the Government
8 in that regard. Okay?

9 **MR. PALOMO:** Yes, Your Honor. Thank you.

10 **THE COURT:** Okay. So we are on page 1 of the
11 Addendum. The first objection is really a wholesale objection.
12 It's to all of paragraphs 4 through 26 of the Presentence
13 Report and then paragraphs 28 and 29, as well.

14 Do you want to be heard on this?

15 **MR. TAVITAS:** Your Honor, other than what's in the
16 objections, again, I understand, obviously we went to trial.
17 Mr. Johnson maintained his innocence. And so I just wanted to
18 make those particular objections. I've got nothing else to add
19 to that, Your Honor.

20 **THE COURT:** Did you have anything to say, Mr. Palomo?

21 **MR. PALOMO:** The Government stands by its responses
22 to those objections, Your Honor.

23 **THE COURT:** The objections are overruled. The jury
24 made the findings that they found; and the factual allegations
25 that are set out in paragraphs 4 through 26 and paragraphs 28

1 and 29, I believe, are well supported by the evidence, as
2 detailed in the Presentence Report. Other than a wholesale
3 objection, I'm not really being presented any argument as to
4 why I should not simply adopt the Presentence Report. It's not
5 enough to simply say that something is inaccurate. You have to
6 be specific, and it needs to be well supported. And, actually
7 on the contrary, the Presentence Report is drafted by
8 Ms. Wichlinski. I think she's done an excellent job at fairly
9 capturing what the evidence was that was presented at trial.
10 And so the objection is overruled.

11 I suppose the same applies to paragraphs 39 and 49. This
12 is whether or not the enhancements for distribution under the
13 Guidelines should be applicable. But I'll give you an
14 opportunity to be heard on that, Mr. Tavitas.

15 **MR. TAVITAS:** Nothing else to add, Your Honor.

16 **THE COURT:** How about you, Mr. Palomo?

17 **MR. PALOMO:** We stand by our response to the
18 objection, Your Honor.

19 **THE COURT:** Okay. I overruled the objection. I do
20 believe that there is really overwhelming evidence that the
21 Defendant knowingly engaged in distribution, as its found in
22 paragraphs 39 and 49 of the Presentence Report and as it's
23 detailed in the Presentence Report.

24 And to repeat, a general denial doesn't suffice. We need
25 some specificity; and in the absence of any kind of

1 specificity -- I sat through the trial. I think Abby has done
2 an admirable job of detailing the facts and the evidence that
3 was presented at trial; that the jury found beyond a reasonable
4 doubt the Defendant did engage in distribution; and of course,
5 right now we're operating under a preponderance standard. And
6 so that objection must be overruled.

7 Paragraphs 41 and 51, the Defendant objects to whether or
8 not there was a knowing misrepresentation of his identity in
9 the effort to persuade or induce, you know, the conduct at
10 issue here.

11 And so do you want to be heard on this, Mr. Tavitas?

12 **MR. TAVITAS:** Nothing else to add, Your Honor.

13 **THE COURT:** Anything else from you?

14 **MR. PALOMO:** Just that this was -- This
15 misrepresentation of his identity, Your Honor, was
16 indispensable means by which he committed these crimes.

17 **THE COURT:** Yeah. That's precisely right. There's
18 no question that the evidence is overwhelming, frankly, that
19 the Defendant was, in fact, Ashley Campbell; that's who he was
20 purporting to be when he was engaging in much of the activity
21 that played out during the trial. And so the finding that
22 2G2.1(b)(6) is applicable follows from that factual finding as
23 I see it; and so the objection is overruled.

24 The last objection is really more, I suppose, of -- I
25 guess it's both a factual and a legal objection. But I'll hear

1 from you now on that, Mr. Tavitas.

2 **MR. TAVITAS:** Your Honor, again, I have nothing else
3 to add other than what was presented in the objection.

4 **THE COURT:** Can you take me through the analysis on
5 this one, Mr. Palomo.

6 **MR. PALOMO:** Yes, Your Honor.

7 **THE COURT:** This is unrelated to his prior
8 conviction; right?

9 **MR. PALOMO:** It's still related to his prior
10 conviction, Your Honor, but the prior conviction triggers a
11 different portion of 4B1.5.

12 Walk me through that.

13 **MR. PALOMO:** Yes, Your Honor. So 4B1.5(b) applies,
14 4B1 --

15 **THE COURT:** Hang on. Let me get caught up with you
16 here by actually looking at the Guideline.

17 (Brief pause.)

18 Okay. I'm with you now. Okay. The prior is, of course,
19 relevant because the instant offense was committed subsequent
20 to his prior; is that what you're saying?

21 **MR. PALOMO:** Yes, Your Honor. But not just that.

22 **THE COURT:** Right.

23 **MR. PALOMO:** So in footnote 6 of the Government's
24 Sentencing Memorandum, we lay out why subsection (a) doesn't
25 apply, because his prior conviction under the categorical

1 standard doesn't trigger application of subsection (a).
2 However, subsection (b) comes into play for a pattern of sexual
3 offenses against minors, including the prior 2008 offense and
4 the offenses of conviction for Counts One, Two, and Three.

5 So all of those taken together constitute the pattern of
6 sexual abuse against minors, Your Honor.

7 **THE COURT:** Maybe I'm not clear, but why is the prior
8 a qualifying sex crime for (b) but not for (a)?

9 **MR. PALOMO:** For (b), it doesn't require application
10 of the categorical approach, Your Honor. So that's the
11 distinction there.

12 And also subsection (a) operates a bit differently with
13 respect to applying a different criminal history category;
14 whereas, subsection (b) applies a five-point increase.

15 So there's a bit of difference both in terms of the
16 threshold and in terms of application on the back end of how
17 the enhancement works.

18 **THE COURT:** In all events, this adds five levels to
19 the guidelines; correct?

20 **MR. PALOMO:** Yes, Your Honor.

21 **THE COURT:** And we are so far above 43 that it
22 becomes somewhat of an academic exercise here; is that true?

23 **MR. PALOMO:** Academic in the sense of his raw score.
24 But still for recordkeeping purposes for the Sentencing
25 Commission, to reflect accurately the Defendant's crimes and

1 his history, the Court should apply that enhancement,
2 Your Honor.

3 **THE COURT:** I'm not minimizing it in the least. What
4 I'm saying is that, as far as calculating where he falls in the
5 guidelines, whether this applies or not, he's going to be a
6 Level 43; is that correct?

7 **MR. PALOMO:** That's correct, Your Honor.

8 **THE COURT:** I do overrule the objection. I do think,
9 notwithstanding what I have just said, I do think that 4B1.5(b)
10 does apply; and the five-level enhancement is applicable for
11 the reasons stated in the Government's response, on pages 2
12 and 3 of the Addendum, that by virtue of the Defendant's prior
13 conviction as well as the conviction in this case of the three
14 co-conspirators in the production of child pornography as it
15 relates to those, that, combined, it does amount to a pattern
16 of activity involving prohibited sexual conduct. And,
17 therefore, 4B1.5(b) applies; and the objection is, therefore,
18 overruled.

19 Okay. Anything else that I need to resolve as it relates
20 to the objections, Mr. Tavitas?

21 **MR. TAVITAS:** No, Your Honor.

22 **THE COURT:** All right. How about you, Mr. Palomo?

23 **MR. PALOMO:** No, Your Honor.

24 **THE COURT:** All right. I do now adopt the factual
25 statements contained in the Presentence Report as my own

1 findings of fact, and I also adopt Probation's conclusions as
2 to the applicable guidelines.

3 And so I will state that the guidelines are as follows:
4 There's a total offense level of 43. The criminal history
5 category is I. And under the Guidelines, that suggests a life
6 sentence as the recommended sentence.

7 Supervised release is five years on Counts One through
8 Three and Six, and it's one to three years on Count Seven. The
9 fine range is \$50,000 to \$250,000. Restitution will be
10 determined at a later proceeding, or in a later proceeding.
11 And there is a \$500 special assessment, \$100 on each count,
12 that the Defendant is accountable for.

13 So based on all the rulings that I've made, is that all
14 accurate?

15 Mr. Tavitas?

16 **MR. TAVITAS:** It is, Your Honor.

17 **THE COURT:** Mr. Palomo?

18 **MR. PALOMO:** That's correct, Your Honor.

19 **THE COURT:** Okay. All right. So, Mr. Tavitas, as
20 the lawyer for the Defendant, is there anything that you wish
21 to say on his behalf before I sentence him?

22 **MR. TAVITAS:** Your Honor, these are tough situations
23 which obviously after, you know, going -- you know, going
24 through -- I think it was a four- or five-day trial and seeing
25 the evidence that was presented -- You know, I've been on this

1 case for almost two years, and, you know, I've talked with
2 Mr. Johnson often. His mom and his sister are present.
3 They're very nice individuals, Your Honor. You know, I talked
4 with them before trial and even after trial. So I know
5 Mr. Johnson -- I know he's very appreciative of them being
6 here. I know sometimes it's -- it's a pretty lonely -- I can
7 only imagine, lonely feeling sometimes having clients -- when
8 you're facing a sentence, especially a significant sentence,
9 and being all by yourself. And so I do know that he is
10 appreciative of them being here.

11 Your Honor, obviously, you know, in these types of cases,
12 you know, the guidelines go through the roof, right?
13 Mr. Johnson is looking at a potential life sentence. He
14 obviously has a mandatory minimum of 25 years, and that's what
15 we're asking the Court to sentence him.

16 He's 33 years old. Does have six dependents. He has been
17 incarcerated two years on this particular matter. As you did
18 indicate, he does have a criminal history score of I.

19 So for all those reasons, Your Honor, we're asking the
20 Court to sentence him to the least amount of time, and that's
21 being 25 years.

22 One other request, Your Honor, is that his sister had
23 indicated that, in speaking with Mr. Johnson, asking to make a
24 recommendation to the BOP. There's a facility called Sandstone
25 in Minnesota. I did advise Mr. Johnson the Court will

1 obviously just make the recommendation and it's up to the
2 Bureau of Prisons to decide. But that is where he indicated
3 where he wanted to be placed, as well as obviously get the
4 credit for time he's been incarcerated since this case was
5 filed.

6 Thank you.

7 **THE COURT:** Okay. Thank you, Mr. Tavitas.

8 Mr. Johnson, do you wish to say anything on your own
9 behalf, sir, before I sentence you?

10 **THE DEFENDANT:** Yes.

11 **THE COURT:** Sure.

12 **THE DEFENDANT:** I really wasn't going to say
13 anything, but I just wanted to -- I felt like I needed to speak
14 today because it's kind of -- I'm like a mute, kind of, without
15 addressing things.

16 But every night, like, I pray. I ask for forgiveness
17 because I feel that I could have made better decisions and
18 choices to prohibit certain situations that happened with this
19 case. I honestly just wanted to have a fair trial and a fair
20 chance and presenting, you know what I'm saying?

21 Not saying I'm a hundred percent innocent on everything.
22 But I just wanted to take responsibility for the things that I
23 did do, and I wanted to fight for innocence for the things I
24 felt I did not do and which I just feel it wasn't done. But I
25 went through a jury, and I was found guilty through a jury.

1 But, you know, I apologize for my actions for the things
2 that I did, did, and I do take responsibility for those things,
3 and it's unfortunately me being accused of the things I didn't
4 do. But we're not going to get into that because, you know,
5 we're past it.

6 But I do have children, you know, that depend on me. And
7 I also, you know -- you know, I love my children. And even
8 other children in my family and everything, I take pride into
9 being that example for them. And I would never intentionally
10 harm anyone, especially someone of the age of this case, and I
11 would never intentionally try to victimize anyone because
12 that's not my character, and it's never been my character. I
13 do have a background of a felony from something that happened
14 when I was 19. And it just kind of feel like that's what's
15 being held against me, from that mistake that I made then. But
16 I am apologetic, and, you know, I feel horrible for the people
17 that was victimized in this situation. And, like I said, I
18 wanted a chance to take responsibility for my doings and just
19 fight for the things that I didn't do.

20 **THE COURT:** Okay. I appreciate that. Thank you,
21 Mr. Johnson.

22 Mr. Palomo, do you want to be heard, sir?

23 **MR. PALOMO:** Yes, Your Honor.

24 Dominique Harper had children that depended on her, too.
25 Kelsie Gauler had children that depended on her. Those

1 children aren't going to have their parents anymore.

2 In Dominique Harper's case, she'll get out of jail one
3 day, return to her children's lives. Kelsie Gauler won't.

4 When Defendant sent a message to somebody that he had
5 never met on Facebook saying, "Do you want to make \$2,000," he
6 did this with the intent of persuading these people, who had
7 never met him once before, didn't even know that he existed,
8 with the intention of having them produce child pornography,
9 child pornography involving their own children.

10 So now John Doe Three gets to wake up this morning and get
11 ready for his day the way that other four-year-old children do.
12 He eats his breakfast, brushes his teeth. But his mom is
13 sitting in jail today because this man persuaded her to do
14 something that wasn't actually in her nature. She needed
15 money, and she made a terrible criminal choice to sexually
16 abuse her child at his direction.

17 Kelsie Gauler. John Doe One and Two, her children, who
18 were four and six at the time of these offenses, now a couple
19 years older, they're getting ready to go to first and third
20 grades, packing their lunches, going to school like other kids,
21 except the difference is that they'll never see their mother
22 again. On March 15th, she committed suicide, before this
23 trial. And there are a lot of things that go into that. But
24 he's to blame for part of it, because if she had never had this
25 man drop into her life, maybe she'd still be here today. Maybe

1 her children would have a mother to call to help them get ready
2 in the morning for school.

3 That's why these crimes are serious.

4 This isn't a normal child pornography -- as if any child
5 pornography offense is normal. This is a strange outlier. Did
6 this man persuade these women to create these images for his
7 own sexual gratification? The messages presented at trial show
8 that he did. When he sends messages like, "Are you going to
9 jack it off or suck it," talking about John Doe One's penis, an
10 infant, why did he write that but for some purpose of sexual
11 gratification? There was certainly an element of that in this
12 case. But this is deeper, different, more sinister.

13 The reason he was trying to get these images from these
14 women wasn't just because he got sexual gratification from
15 them; it was to blackmail them. And this is the most
16 perplexing part. For what? Why do these crimes? Why reach
17 out to these women and offer them \$2,000 and then distribute
18 child pornography to them to normalize that criminal conduct so
19 that you can get images of their kids? And for what? So that
20 you can blackmail them, try to get money out of them, persuade
21 them to have sex with you?

22 These women's lives, these co-conspirators, and their
23 children, their lives are utterly ruined because of this. The
24 seriousness of this offense is almost mind-boggling.

25 Now, in view of the guidelines, these guidelines

1 accurately account --

2 **THE COURT:** Have those two moms been sentenced yet?

3 **MR. PALOMO:** Not yet, Your Honor.

4 **THE COURT:** What are they looking at?

5 **MR. PALOMO:** Dominique Harper pleaded guilty to
6 transportation of child pornography without a plea agreement
7 setting a range. So her minimum is going to be five years with
8 a maximum of 20.

9 Jasmine Stanley's sentencing proceeding will happen on
10 December 21st, Your Honor. She'll change her plea on
11 December 21st. She's currently charged with one count of
12 production of child pornography.

13 **THE COURT:** That's also in Chicago?

14 **MR. PALOMO:** Yes, Your Honor.

15 **THE COURT:** Such an odd case. They're both victims
16 and co-conspirators. It's really odd.

17 **MR. PALOMO:** And the Government doesn't want to
18 minimize their role in this. They produced these images. They
19 are the hands-on abusers of these children. They deserve to be
20 punished for their role in these crimes. But the first mover,
21 the but-for cause here, is sitting in this courtroom (pointing
22 to Defendant). If he would have been doing anything else,
23 bowling, managing his D.J. business or his entertainment
24 business, doing something else productive with his time, we
25 wouldn't be here today. Potentially some of these children

1 would be spending time with their mothers now.

2 But we're not. And if we view this in the context of, not
3 just the Sentencing Guidelines, which gives us a number that's,
4 frankly, really high -- It recommends a life sentence. But the
5 reason that the Government is recommending 50 years is in view
6 of the 3553(a) factors. The very serious and just perplexing
7 and -- It's so hard to wrap your head around why this man did
8 these things. And then if you view that against the
9 unspeakable harm that he's caused through it, you're looking at
10 one of the more serious offenses that I can think of,
11 Your Honor.

12 Now, if you look at his history, there's really nothing in
13 his history that could even come close to mitigating this. He
14 didn't have the same kind of privilege that other Defendants
15 may have or that other people in society might have, but his
16 childhood also wasn't riddled with the kind of abuse that would
17 potentially make him a little less culpable. He went into this
18 with his eyes open. He knew what he was doing, especially
19 because in 2008 he was convicted of a sex offense. He had to
20 register as a sex offender; he had been through the system
21 before; and he knew he shouldn't be doing these things.

22 As the Court recalls from the evidence presented at trial,
23 some of his communications with his co-conspirators included
24 statements of, "You know how illegal this is. I have buddies
25 on the force. If we get caught doing this, we're in big

1 trouble." And that's precisely what he used as a threat
2 against these other women. "I'll expose you." Expose you for
3 what? "Stuff that I know is illegal, not just illegal, but
4 highly illegal. If I expose you, your life is ruined." Well,
5 their lives were ruined anyway.

6 That's why a 50-year sentence is appropriate here. In
7 view of his history and characteristics, anything less than a
8 50-year sentence would be insufficient to address the
9 seriousness of the conduct in view of his history.

10 And then you talk about rehabilitation, specific
11 deterrence, and just protecting the public from this man.

12 The public is not safe if he's not in jail. If he's not
13 in prison, he'll find a way to victimize other people. He
14 didn't just do it twice, in 2008 and then for these offenses.
15 He did it in 2008 and over a period of approximately
16 five months in 2019. This was protracted, premeditated conduct
17 on his part to get these images from these women.

18 A sentence of 50 years is appropriate, Your Honor, and we
19 ask that you sentence him to that term of imprisonment,
20 followed by a lifetime of supervised release.

21 **THE COURT:** Okay. Thank you, Mr. Palomo.

22 All right. Mr. Johnson, in this case, as in any case,
23 it's my obligation to try to weigh the aggravating and
24 mitigating circumstances and arrive at a fair sentence; and I
25 do that through a prism of various factors that I have to take

1 into account.

2 The starting place in any sentencing hearing is: What do
3 the Sentencing Guidelines suggest. You know, I start there,
4 and then I start looking at other factors as well that are just
5 as important as the Sentencing Guidelines. And through that
6 process, the goal is to arrive at a sentence that is sufficient
7 but not greater than necessary to reflect all of the factors at
8 issue.

9 And so in addition to the Sentencing Guidelines, I have to
10 look at the nature and circumstances of the offense.
11 Obviously, I have to look at what you did that brought you
12 here, the conduct underlying the offense. That's no surprise.
13 So that's one factor.

14 I have to also look at your personal history and
15 characteristics. And so as I frequently put it, what I have to
16 do is sentence you both for what you've done, but also for who
17 you are as a person, speaking more broadly. And who you are as
18 a person-- in other words, your personal history and
19 characteristics --captures a broad range of things. It can be
20 your criminal history. It can be your educational background,
21 your employment history, your drug and alcohol use, how you
22 were raised, your family circumstances, your children. The
23 whole range of things goes in to deciding what are your
24 personal history and characteristics.

25 Of course, I have to, as Mr. Palomo kind of touched upon,

1 I have to, when I announce the sentence, hope that it reflects
2 the seriousness of the offense, that it will promote respect
3 for the law, provide just punishment, as well as deter criminal
4 activity.

5 Deterrence is an important factor. I mean, some people
6 argue all the time about the usefulness of deterrence. There's
7 both specific deterrence, trying to prevent you from committing
8 additional crime, but there's also the concept of general
9 deterrence, sending a message to the community about what can
10 happen if you engage in this kind of behavior; and hopefully,
11 it prevents, or deters, others from engaging in this kind of
12 behavior. And there's other factors, as well.

13 The long and short of it is, this is much more of an art
14 than a science. It's trying to weigh all of the factors in
15 arriving at a fair sentence.

16 So let's talk about -- First of all, the Guidelines
17 recommend a life sentence, and the Guidelines treat this about
18 as serious as a homicide. And so I have to pay attention to
19 that and weigh that in my analysis.

20 When I move on to the 3553 factors, you know, the nature
21 of this offense, I scarcely know what to say, as Mr. Palomo
22 states. I sat here during this trial, and I was mystified. I
23 didn't understand, on any level, I didn't understand what your
24 motivation was. You know, were you motivated in really getting
25 pictures, photographs, of very, very young children displayed

1 in a sexual way? In part, yes. I mean, there's a very
2 disturbing back-and-forth where one of these co-conspirators
3 sends a picture of their young girl, and they have their legs
4 spread, and the fingers are inserted in the girl's vagina, at
5 your behest. So somewhere in play here is, perhaps, your
6 interest in that kind of imagery.

7 And yet, on the other hand, there's hints that what's
8 really going on here is that it's actually an extortion scheme,
9 that you are roping these women into engaging with you in this
10 way, sending you these illicit pictures, with the intention of
11 turning around and using it against them in some nefarious or
12 devious way to either get money from them or to extort sex out
13 of them. It's all a little murky.

14 But it's so disturbing. It's so disturbing. Like I said,
15 I scarcely know what to say about it.

16 We're talking about infants in some respect here who are
17 being used as essentially props, or in one view of this,
18 they're sort of props for your gratification, or the other view
19 of it, they're like bait as part of this scheme. No matter how
20 you look at it, it's just deeply disturbing, and no one could
21 sit through this trial and not come away with that conclusion.
22 It's very sad.

23 Who it's mostly sad for, of course, these children, for
24 starters. As Mr. Palomo points out, two of these women,
25 because they made the really poor judgment of engaging with

1 you, are now convicted felons. In all likelihood, they're
2 going to be sent to prison, they're going to be removed from
3 these children, and these children are going to be left to
4 wonder, you know, where's their mom. And eventually, they're
5 going to find out, eventually, in the age of the internet, and
6 surely they're going to find out what happened here. And I
7 can't imagine the lifelong kind of burden that that's going to
8 sort of place on their psyche; but to be sure, it will. And
9 that's a tremendous burden that you've placed on the very
10 slender shoulders of very, very, very young people.

11 And then you talk about the women themselves. As I said,
12 either because they were desperate or really, really foolish,
13 they engaged in this behavior using their own children or
14 people close to them and participated in this endeavor. But in
15 all events, they're going to end up in prison.

16 Which brings us to Ms. Guler. Perhaps the biggest
17 tragedy of all. She was a Codefendant in this case. I think,
18 if I'm remembering correctly, she was set to go to trial, and
19 she was released on bond, you know, earlier in the case. And
20 she took her own life. And, surely, the burden of this case
21 and the publicity from the case and the other shame that she
22 likely endured for the behavior she engaged in surely played a
23 role in that. No one could conclude otherwise. And that's
24 just a tremendous tragedy.

25 So I don't think there's anything more I need to say about

1 the nature and circumstances of the offense. It's just about
2 as bad as it gets. Short of taking someone's life. And in
3 many ways, that's what the consequences of it was anyway with
4 the result of Ms. Gauler's fate. Of course, you didn't have
5 any intention of that happening, and I'm not suggesting that,
6 but that was the consequence of it. So the nature of the
7 offense could hardly get any more serious.

8 When I talk about your personal history and
9 characteristics, of course, you engaged in this terrible prior
10 offense back in 2008. Evidently, you were working at a high
11 school and engaged the student and engaged in an aggravated
12 criminal abuse of her. You pled guilty to it and, somewhat
13 unbelievably, received a sentence of probation, I believe, on
14 that prior.

15 That's pretty amazing. Maybe there were circumstances
16 that I don't fully understand. I'm not being critical. I'm
17 just telling you my gut reaction to that. It doesn't seem
18 right to me. But it is what happened. The facts are what they
19 are. You pled guilty to an aggravated criminal sexual abuse,
20 and that's your background, or part of your background.

21 You have had a number of other -- I'll characterize as
22 very, sort of, minor brushes with the law that don't merit
23 discussion here and don't in any way aggravate the offense as I
24 see it.

25 You had a very tough upbringing. I fully recognize that.

1 I think, according to the Presentence Report, your dad is
2 presently incarcerated, and your mom, who is here, suffers from
3 a disability. You were principally raised by your grandma, I
4 believe, or grandparents out in Las Vegas. But at some point
5 they got just too old, and it became difficult for them, so you
6 were shipped back here.

7 And in the Presentence Report, this struck me very much;
8 that, according to the Presentence Report, your grandma and
9 grandpa must have done somewhat well for themselves. They were
10 living in a nice environment in Las Vegas that you were living
11 in; but then when you came back here, given your mom's
12 difficult circumstances, you moved to Harvey, and it's a tough
13 environment. And that juxtaposition kind of struck me, that
14 that would be a difficult thing for a young person to deal
15 with. And so I recognize that, and I think it's an important
16 thing to talk about, your personal history and characteristics.

17 You do have six children, six children by five different
18 mothers; and, you know, that's certainly a factor that's
19 important in any case, as well as you do have some work
20 history. It seems you found a way to support yourself despite
21 tough circumstances.

22 So I've done my level best to take into account all of the
23 factors here; and at the end of the day, I think the
24 Government's request is a reasonable one and is what's called
25 out for given all of the factors that I've talked about, and

1 that's the sentence I intend to give.

2 So let me formally announce it, and then I'll give counsel
3 one final chance to make any final comments or make any other
4 objections.

5 But it is the Judgment of the Court, pursuant to Title 18,
6 United States Code, Section 3551 and 3553, that the Defendant
7 is hereby committed to the custody of the Bureau of Prisons for
8 600 months on Counts One through Three, and 480 months on
9 Count Six, and 120 months on Count Seven. All of those will
10 run concurrent with one another.

11 Defendant will be placed on 15 years of supervised release
12 for Counts One through Three; fifteen years on Count Six; and
13 three years on Count Seven, all to be served concurrent with
14 one another.

15 There will be a number of conditions of supervision that I
16 will talk about here in a minute but --

17 Well, let me just do it now, and let me ask you,
18 Mr. Tavitas. Have you had a chance to sit down with your
19 client and thoroughly go over the proposed conditions of
20 supervision that are set out in the Presentence Report? And in
21 the report, it states both the proposed terms and the reasoning
22 behind each of the proposed terms. Have you had a chance to
23 sit down with your client and do that?

24 **MR. TAVITAS:** We have, Your Honor.

25 **THE COURT:** Ordinarily, I'm required to read these

1 officially into the record; but with your permission, I would
2 like to simply incorporate the language of each of these
3 conditions from the report into my comments here today as well
4 as the reasoning behind each one of these to, really, spare me
5 having to officially read these into the record. Do you have
6 any objection to that procedure?

7 **MR. TAVITAS:** No, Your Honor.

8 **THE COURT:** Mr. Johnson, do you have any objection to
9 that yourself?

10 **THE DEFENDANT:** No.

11 **THE COURT:** Okay. All right. So I will give the
12 four mandatory conditions -- well, actually the five mandatory
13 conditions, that are set out on page 24 of the Presentence
14 Report, Document No. 113.

15 As it relates to the discretionary conditions, I'll give
16 number one, number two. We're now on page 25 of the report.
17 I'll give number 3, number 4, number 5, number 6, number 7,
18 number 8, number 9, number 10, number 11, number 14, number 15,
19 number 16, number 17, number 18, number 19, and number 20.

20 I will withstand at this point any of the conditions
21 relating to the restitution because we're delaying that issue.

22 I'm going to impose no fine given the Defendant's lack of
23 assets makes it unlikely he will be able to pay a fine. So the
24 fine is waived. But he is ordered to pay a special assessment
25 of \$500 that's due immediately.

1 The sentence that I've just given is actually below what
2 the guidelines suggest. I've given the sentence that I've just
3 announced for all the reasons that I have tried to explain in
4 detail on the record.

5 Counsel, do either of you know of any reasons why the
6 sentence should not be imposed as stated?

7 Mr. Tavitas?

8 **MR. TAVITAS:** No, Your Honor.

9 **THE COURT:** All right. Mr. Palomo?

10 **MR. PALOMO:** No, Your Honor.

11 **THE COURT:** I will state that, irrespective of
12 whether I have somehow miscalculated the guidelines or erred in
13 the computation of the guidelines in any way, the sentence that
14 I've just announced is the sentence that I would have given
15 notwithstanding that.

16 I can't remember if I just asked this. Have I taken into
17 account your principal arguments in aggravation and mitigation
18 in my announcement here today?

19 Mr. Tavitas?

20 **MR. TAVITAS:** You have, Your Honor.

21 **THE COURT:** Mr. Palomo?

22 **MR. PALOMO:** Yes, Your Honor.

23 **THE COURT:** All right. So I do order the sentence
24 imposed as stated.

25 Mr. Johnson, you've heard the Judgment of the Court

1 imposing sentence upon you; and pursuant to Rule 32(j) of the
2 Federal Rules of Criminal Procedure -- I did forget to include
3 the forfeiture after all that discussion. So let me also add
4 to the Judgment that the following property is forfeited:
5 Taurus PT140 G2 .40 caliber semiautomatic pistol with the
6 serial number SKM35977, as well as assorted ammunition, as well
7 as five cellular phones. The first is a Samsung Galaxy J7 Star
8 cellphone, Serial Number R58M50DJ1RL. Samsung with the serial
9 number J260T1. An iPhone with serial number DNPYF1M2KXKP, an
10 LG LS777 phone, again, serial number 804CYLH1083072, and then a
11 Motorola XT1921-3 with the IMEI of 351841090366651. So all of
12 that property is deemed forfeited essentially by agreement of
13 the parties.

14 All right. Let me go back and just say, Mr. Johnson,
15 you've heard the Judgment of the Court imposing sentence upon
16 you; and pursuant to Rule 32(j) of the Federal Rules of
17 Criminal Procedure, you can appeal your conviction in this
18 case, and you also have a statutory right to appeal your
19 sentence under certain circumstances if you think it was
20 contrary to law. Any notice of appeal must be filed within
21 14 days of the Judgment being entered in your case. And if you
22 want to file the appeal but you're unable to pay for the cost
23 of the appeal, you may apply for leave to appeal in forma
24 pauperis, which means you can pursue an appeal at no cost
25 to you.

1 And, of course, Mr. Tavitas, just perfect the appeal. I'm
2 sure your client will be seeking it, and do so expeditiously.
3 You do remain responsible for the Defendant's representation on
4 appeal unless you are relieved by the Court of Appeals.

5 I will recommend that the Defendant serve his sentence in
6 Sandstone up in Minnesota, and I also recommend, if he wants,
7 participation in the RDAP program given his basic daily drug
8 use, if you think that would be helpful, Mr. Tavitas?

9 (Inaudible discussion off the record between Mr. Tavitas
10 and Defendant).

11 **MR. TAVITAS:** He indicated that he did not want that,
12 Your Honor.

13 **THE COURT:** Okay. Fair enough. I won't make that
14 recommendation.

15 All right. Mr. Tavitas, is there anything else we need to
16 talk about today?

17 **MR. TAVITAS:** No, Your Honor. Thank you.

18 **THE COURT:** Mr. Palomo, how about from your point of
19 view?

20 **MR. PALOMO:** No, Your Honor.

21 **THE COURT:** Okay. Thank you all. Good luck,
22 Mr. Johnson.

23 (Court was adjourned at 11:27 a.m.)

24
25

1 CERTIFICATE OF REPORTER

2 I, Angela Phipps, RMR, CRR, certify that the
3 foregoing is a true, complete, and accurate transcript of
4 proceedings in the above-entitled matter before the Honorable
5 Philip P. Simon, on December 17, 2021.

6

7 Date: January 11, 2022

S/Angela Phipps, RMR, CRR
8 Official Court Reporter
for the U.S. District Court

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